

IN THE  
MATTER OF A  
PLEADER.

We are prepared to accept the interpretation of clause (f) of section 13 of the Legal Practitioners Act (XVIII of 1879) which was adopted by the Calcutta High Court in *In the Matter of Purna Chundur Pal Mukhtar*(1) and we think the facts in the present case show "other reasonable cause" for suspending or dismissing a pleader within the meaning of this clause.

In all the circumstances we think a suspension of the certificate for one month will meet the requirements of the case and we make an order accordingly.

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## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.*

1902.  
September  
17.

NETI RAMA JOGIAH AND THREE OTHERS (PLAINTIFFS), APPELLANTS,

*v.*

VENKATACHARULU AND THREE OTHERS (DEFENDANTS),  
RESPONDENTS.\*

*Civil Procedure Code—Act XIV of 1882, s. 539—Suit for declaration that the defendants were not dharmakartas of certain temples and for the appointment of trustees—No claim for temple property—Specific Relief Act—I of 1877, s. 42—Maintainability.*

A suit for the appointment of new trustees to a temple on the ground that the defendants are not the lawful trustees and that the trusteeships are therefore vacant, is a suit under section 539 (a) of the Code of Civil Procedure, being comprised in the words "whenever the direction of the Court is deemed necessary for the administration of such trust."

*Dishen Chand Esarut v. Syed Nadir Hossein*, (I.R., 15 I.A., 10), relied on.

Such a suit is not invalid under section 42 of the Specific Relief Act, by reason of the fact that no consequential relief is claimed, even if there be temple properties in the possession of the defendants as dharmakartas. Where a suit is maintainable under section 539 of the Code of Civil Procedure and the plaintiff seeks the relief specified in that section, section 42 of the Specific Relief Act does not apply.

*Strinivasa Ayyangar v. Strinivasa Swami*, (I.L.R., 16 Mad., 31), distinguished. New trustees appointed under clause (a) of section 539 will be entitled to

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(1) I.L.R., 27 Calc., 1028.

\* Appeal Suit No. 3 of 1901 presented against the decree of J. H. Munro, District Judge of Godavari, in Original Suit No. 33 of 1900.

demand possession of the temple properties from the defendants in the suit whose title to administer the trust has been negatived by the decree, and, if such possession be not given, will be entitled to bring a suit to eject them from the temple and its endowments.

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SUIT, brought under section 539 of the Code of Civil Procedure, for a declaration that the defendants were not dharmakartas of certain temples, and to have two trustees appointed for the due administration of those temples. Separate written statements were filed, in one of which it was pleaded that moveable and immoveable properties attached to the temples were in the possession of second defendant, and that plaintiffs were entitled to pray for consequential relief, and, not having done so, the suit was not maintainable under section 42 of the Specific Relief Act. An issue was framed on this point, and another as to whether the suit was maintainable under section 539 of the Code of Civil Procedure. The District Judge dealt with the latter issue as follows :—

“The case in the plaint is that up to the decision in Appeal Suit No. 495 of 1887 on the file of the Sub-Court of Cocanada the suit temple had two trustees, that after that date and till 1894 there was only one trustee who was the father of first defendant, that in 1894 this trustee died, upon which the defendants trespassed upon the office on the strength of an illegal appointment by the late trustee of first defendant as his successor and arrogated to themselves the functions of dharmakartas which they had no right to exercise. Paragraph 8 of the plaint contains some vague allegations of mismanagement and in paragraph 9 it is stated that the trespassers are Vaishnavaites and deadly foes of the Sivite creed. No issue as to the alleged mismanagement was taken though there was a full discussion at the time of settlement of issues. The real object of the suit is clearly to eject the defendants who are alleged to be trespassers. The facts are very similar to those in the case of *Strinivasa Ayyangar v. Strinivasa Swam*(1) and the prayers in the plaint are in effect the same. In *Jugalkishore v. Lakshmandas*(2) which is relied upon by the plaintiff's pleader the defendant was sued as a trustee and denied that he was a trustee. The only ground on which it was sought to remove the defendant was mismanagement of the trust property. It was held that though the defendant was not appointed a trustee yet by taking charge of

(1) I.L.R., 16 Mad., 31.

(2) I.L.R., 23 Bom., 659.

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the endowment and purporting to manage it as temple property, he made himself a constructive trustee and was liable as such to the beneficiaries. It is therefore argued that in the present suit the defendants are also constructive trustees and that section 539, Civil Procedure Code, is applicable. The same might be argued in the case of every trespasser and it is settled law, that section 539 does not apply to suits brought against trespassers."

He held that the suit was not maintainable under section 539 of the Code of Civil Procedure and dismissed it.

Plaintiffs preferred this appeal.

*V. Krishnaswami Ayyar* for appellants.

*T. V. Seshagiri Ayyar* for respondents.

JUDGMENT.—The plaintiffs instituted this suit under section 539 of the Civil Procedure Code, after obtaining the sanction of the Collector, for the appointment of new trustees to a certain public temple on the ground that the defendants who are now in management of the temple are not the lawful trustees and that the trusteeships are therefore vacant.

Certain allegations were no doubt made in the plaint that the defendants were guilty of malversation, but no such issue was raised.

The substantial question therefore for determination in the case is whether the defendants are the lawful trustees of the temple as claimed by them. If they are so, there is an end of the suit, but if they are not, then, there is a vacancy in the office of one or both of the trusteeships, and the plaintiffs, as persons interested in the institution, pray for an order of Court directing the appointment of new trustees for the due administration of the trusts of the temple.

In our opinion such a suit is comprised in the words of the section, viz., "or whenever the direction of the Court is deemed necessary for the administration of such trust," and the suit therefore falls under section 539 (a) of the Civil Procedure Code. In support of this view we may refer to the opinion of the Judicial Committee of the Privy Council in *Bishen Chand Esarut v. Syed Nadir Hossein*(1) in which Sir Barnes Peacock in delivering the judgment of the Committee stated "If there had been any objection that he (*i.e.*, the plaintiff) was illegally substituted as

(1) L.R., 15 I.A., 10.

trustee, an application might have been made by any person interested in the performance of the trusts to have him removed and a new trustee appointed by the Court under the Code of 1877." As pointed reference is made to the Code of 1877 in which for the first time section 539 was introduced, there having been no section corresponding to it in the Procedure Code of 1859, it is quite clear that the provision referred to by the Privy Council is section 539. The respondent's (defendant's) vakil seeks to support the decree of the District Judge on the ground that the suit should be dismissed under section 42, Specific Relief Act, 1877, inasmuch as there is no prayer for recovery of possession of the temple and its property from the defendants by the new trustees who may be appointed by the Court, and in support of this contention he relies on *Strinivasa Ayyangar v. Strinivasa Swami*(1).

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That case related to a religious mutt, and, after deciding that the case was one that could not be brought under section 539, this Court, regarding the suit as one that could be brought under the general law, apart from section 539, held that the plaintiff was bound to seek relief by praying for delivery of possession to the head of the mutt who should be appointed by the Court as the successor of the deceased head of the mutt.

In our opinion that decision is inapplicable to the present case, which we hold to be one maintainable under section 539, and in which the plaintiffs ask for the relief specified in clause (a) thereof. In our opinion, therefore, section 42 of the Specific Relief Act, is no bar to the maintainability of the suit.

If new trustees are appointed by the Court under clause (a) they will be entitled to demand possession from the defendants whose title to administer the trust is negatived by the decree and if the defendants choose not to comply with the demand, the new trustees will be entitled to bring a suit under the ordinary law to eject them from the temple and its endowments.

We therefore set aside the decree appealed against and remand the suit for disposal according to law with reference to the above observations.

Costs in this Court are to be costs in the suit.

(1) I.L.R., 16 Mad., 31.